



Alberta Court of Justice

Conflicts – Counsel Acting for More Than One Defendant

Effective: March 16, 2011

Commencing immediately, if Counsel intends to act for more than one defendant in a single prosecution, Counsel will be expected to satisfy the Court that to act for co-defendants would not impair the administration of justice. More specifically, the following practices will apply in all such cases:

1. At an early stage in the proceedings and before any hearing date is scheduled, the issue of conflict should be expressly addressed on the record, in the presence of the defendants.
2. If the issue of conflict is not raised by the Court, it should be expressly raised and addressed by Counsel.
3. At a minimum, Counsel will be expected to confirm that each defendant has received independent legal advice, is aware of the impact that this practice has on each defendant's privilege, is aware that if an actual conflict materializes the lawyer will not be able to continue to act and that each defendant has provided Counsel with his or her written and informed consent to the same lawyer acting for more than one defendant.
4. Crown Counsel will be expected to advise the Court whether, based on the complexion of the case, there is any material risk to the integrity of the proceedings should one counsel act for more than one defendant. Crown Counsel will be expected to identify the nature and extent of any risk to the administration of justice, including any differences in the defendants' legal position based on the Crown theory.
5. The Court's assessment of risk to the court process will take into account the respective positions of Counsel but the ultimate determination will be that of the Court. The Court will be guided by the need to protect the integrity of the court process.

6. If a summary determination of the conflict issue can be made, there will be no need for a conflict hearing. If a summary determination cannot be made, the Court may set a date for a more comprehensive 'conflict hearing', including an assessment of the effectiveness of any client consent, recognizing that a criminal prosecution is an evolving process and a defendant's consent may be of minimal assistance in mitigating the risk to the administration of justice.
7. Nothing in this Directive requires Counsel to divulge any confidential or privileged information. It is expected that Counsel will not divulge any confidential or privileged information without express instructions from the client.
8. This Directive does not prohibit multi-party representation in criminal proceedings. Rather it recognizes the risks inherent in such a practice and seeks to ensure that those risks, and potential risks, are identified, addressed and, if necessary, resolved at an early stage.